

SINGAPORE REPORTS**INDO-AUSTRALIAN TRADING CO. (PTE.) LTD.
v. TAN TONG PENG**

[A.C.J. (Chua J.) April 5, 1977]

[Singapore — District Court Appeal No. 18 of 1976]

Landlord and Tenant — Rent-controlled premises — Claim for possession — Whether house came within the definition of "premises" — Whether house after being renovated was a "new building" — Control of Rent Act (Cap. 266), s. 2.

The plaintiffs as owners of Lot 105-2 Mukim 28, Changi, claimed for possession of a piece of land situate on the said lot together with the house erected thereon by the defendant and known as No. 391E Jalan Tiga Ratus (hereinafter called No. 391E). The main issue was whether or not No. 391E came within the definition of premises contained in section 2 of the Control of Rent Act (Cap. 266). The plaintiffs' case was that No. 391E was a new building erected after September 7, 1947. The defendant submitted that No. 391E had been at the same site since 1941 or 1942 and that in 1945 it was renovated and enlarged. The plaintiff appealed against the decision of the learned District Judge who held that No. 391E was not a new building.

Evidence showed that the only significant changes to the house were the following:—

- (1) zinc roof put up in 1960 in place of attap roof;
- (2) part of the concrete floor was done in 1960 (the other part of which was already done in 1945).

Held, dismissing the appeal: (1) No. 391E was not a new building;

(2) the correct test to apply is whether the old building has been subjected to such a substantial structural and/or other alterations that it becomes a new building in fact;

(3) the word "new" in the definition of "premises" in the Act is used in relation to the building and not to the materials of which it is comprised.

Cases referred to:—

- (1) *Eastern Realty Co. Ltd. v. Chan Hua Seng* [1967] 2 M.L.J. 195.
- (2) *Bank Negara Indonesia v. Philip Hoalim* [1973] 2 M.L.J. 3.
- (3) *Kai Nam v. Ma Kam Chan* [1956] A.C. 358, P.C.

CIVIL APPEAL.

L.A.J. Smith for the appellants.

Adab Singh (Asst. Director of Legal Aid) for the respondent.

Chua J.: This is an appeal by the plaintiffs, the owner of Lot 105-2 Mukim 28 Changi, against the decision of the District Judge dismissing the plaintiffs' action against the defendant for possession of 27,405 sq. feet of land situate on Lot 105-2 Mukim 28, Changi, (Lot 105-2) together with the house erected thereon known as No. 391E Jalan Tiga Ratus. (No. 391E).

It was not in dispute that the plaintiffs purchased Lot 105-2 in 1950. It was agreed between the parties that the defendant was the ground tenant of the 27,405 sq. feet of land and that No. 391E was built by the defendant.

The substantial issue in this action was whether or not No. 391E came within the definition of "premises" contained in section 2 of the Control of Rent Act, (Cap. 266) (the Act). The plaintiffs contended that it did not while the defendant contended that it did.

A "Premises" is defined in the Act to mean:—

"any dwelling house...and any other building...in which persons are employed or work...and include any land whereon any such building is or has been erected with the consent of the landlord but does not include any new building built or completed after September 7, 1947."

B The plaintiffs' case was that their managing director, Bachoo Singh, visited Lot 105-2 in 1963 and No. 391E was being constructed and that before the erection of No. 391E there was no building standing on the site but that there was one house of planks and attap roof bearing no number at the vicinity and this was demolished after No. 391E was erected. No. 391E was completed in 1963 and three photographs of it (Exhibits P1 to P3) were taken. (The parties agreed that these photographs show the premises as at 1963).

C To put it shortly the plaintiffs' case was that No. 391E was a new building erected after September 7, 1947.

D The defendant's case, on the other hand, was that No. 391E was built during the Japanese occupation of Singapore in 1941 or 1942. It was originally of plank walls and attap roof and that in 1945 it was renovated and enlarged. The present house is made of plank walls and zinc roof, which was put on in 1960. At the beginning the house was unnumbered but later a number 902 was nailed to it by some officers from the Government and before the house was numbered No. 391E Jalan Tiga Ratus, it was known as No. 391E Mukim 28, Changi Road.

E To put it shortly the defendant's case was that the house now known as No. 391E Jalan Tiga Ratus had been at the same site since 1941 or 1942 and that in 1945 the house was renovated and enlarged.

F The District Judge's finding was this:

"Upon a consideration of all the evidence I found that premises No. 391E Jalan Tiga Ratus was built before September 7, 1947 with the consent of defendant's then landlord and therefore came within the definition of premises contained in the Control of Rent Act Cap. 266. I rejected the allegations by the plaintiff that the premises in question was built in 1963 and that a building in its vicinity was demolished after 391E Jalan Tiga Ratus was completed. I further found that though the house had undergone certain renovations, those renovations which were carried out over a period of time did not result in the premises becoming a new building."

G The complaint of the appellant in this appeal is that the District Judge was wrong in holding that the appellant had not proved that No. 391E was a new house and not within the Act.

H Counsel for the appellant submits that several admissions by the defendant referred to in the written Grounds of Judgment of the District Judge substantially proved that the house shown in photograph P3 taken in 1963 was a completely different house from the attap hut built in 1945.

I The admissions say counsel for the appellant appear in the following evidence of the defendant in cross-examination:—

"Q. Is the window in P1 new?

A. No, it had a new coat of paint. Window in P1 was not there in 1945. Just now I could not make out the photograph. The house was renovated in 1945 and the window was there in 1945.

- Q. Did you have any plans drawn up for this house at any time?
A. Never.
Q. Any plans for the roof?
A. No.
Q. There is a wall shown in P1?
A. Yes, a wall of hollow bricks with plaster. I think it was red bricks covered with plaster.
Q. I put it to you in 1945 hollow bricks were not available?
A. Red bricks and not hollow bricks were used.
Q. Was retaining wall seen in P1 there in 1941?
A. The retaining wall was built in the 1950s.
Q. Do you suggest that the corridor in P2 was built in 1945?
A. It was built in 1945 but it was not in that good looking condition then. It was renovated later on in 1960.
Q. I put it to you the whole verandah in P2 was not there in 1945?
A. It was there.
Q. Are you saying railings and pillars were there?
A. The pillar was not there. There was another one there.
Q. All the woodwork at verandah came up in 1960?
A. Yes, in place of old ones.
Q. Was all the framework facing verandah changed?
A. Changed in 1960.
Q. Was it all the woodwork shown in P3 changed?
A. Yes, in 1960.
Q. Weren't all the windows in P3 newly cut in new timbers?
A. These windows were replaced by larger ones.
Q. What you call renovation is removing all the timbers and roofs and putting up new ones?
A. Yes.
Q. You also put up completely new foundations?
A. Yes.
Q. Everything of this house is new as compared with old house?
A. I changed them.
Q. Is it not a fact that you did not obtain your original landlord's permission to build original house?
A. No, I got permission from the person in charge of the estate.
Q. The original hut was nothing like that in P3?
A. That is so.
Q. In 1945 did you get anybody's permission to extend the original atap but?
A. I got the permission from the same person.
Q. Do you agree the 1945 house looked very different from the one in P3?
A. Yes. It was of atap.
Q. You have a concrete floor and concrete foundation to 1960 house?
A. Yes.
Q. The concrete foundation and concrete floor was laid in 1960?
A. Yes."

In re-examination, however, the defendant states:—

- "Q. When did you 1st do the flooring of your house?
A. I cannot remember. When it was an atap house part of the floor had already been made. I also did part of the flooring in 1960.
Q. What sort of flooring have you in your house now?
A. Concrete flooring.
Q. Was any part of the present flooring made in 1945 or before 1945?
A. Yes.
Q. In which way is your present house different from that in 1941 and 1945?
A. The original house was made of timber from the timber yard. The house was repaired in 1945. At present the house is newer and more beautiful than the old one.

- A Q. When was the concrete foundation put in?
A. Actually there is no foundation. By foundation I took it to mean piling work. I took concrete floor to mean foundation.
Q. Was there any change in your house since 1945?
A. No."

Counsel for the appellant says that according to the defendant everything in the house was changed and looking at the photographs Exhibits P1 to P3 it is conclusive that No. 391E is a completely new house.

The question that falls to be decided is whether No. 391E after being renovated is a "new building" within the meaning of the Act.

- C The correct test to apply to decide this question is whether the old building has been subjected to such a substantial structural and/or other alterations that it becomes a new building in fact. This, as Wee Chong Jin C.J. said in *Eastern Realty Co. Ltd. v. Chan Hua Seng*⁽¹⁾ is:

- D "always a question of degree depending on the facts of each particular case. No test of universal application can in my view be laid down."

(See also *Bank Negara Indonesia v. Philip Hoalim*,⁽²⁾ a Privy Council decision).

- E The word "new" in the definition of "premises" in the Act is used in relation to the building and not to the materials of which it is comprised (See *Kai Nam v. Ma Kam Chan*,⁽³⁾ a Privy Council decision).

- F The District Judge found that the defendant was an honest witness. From the evidence of the defendant it appears that (1) the whole of the verandah of the house was there since 1945 and that all the woodwork of the verandah was replaced in 1960; (2) the windows were there since the house was first built and they were later replaced by larger ones; (3) the plank walls were there since the house was built and part of the plank walls were replaced in 1960; (4) the concrete base below the plank walls was there since 1945; (5) part of the concrete floor was done in 1945.

- G The only significant changes made to the house were the following: (1) zinc roof put up in 1960 in place of the atap roof; (2) part of the concrete floor was done in 1960 (the other part of which was already done in 1945).

In my view the District Judge was quite correct in his finding that No. 391E is not a new building.

- H The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *L.A.J. Smith; Director of Legal Aid.*